CF0000057849

CRA 1588/94

Division Bench (Criminal)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

APPEAL OF PRISONER

No. 225 Name [illegible]

Father's name जगरूपराम

Residence [illegible] Age 45

Sentenced to आजीवन कारावास on 27/10/94

Under section 302 भादवि by सेशन जज जोधपुर एडिशनल

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 27/10/94

2 Date of which copy received 15/11/94

3 Date on which Appeal sent 20/11/94

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 225 Name [illegible]

Continued in [illegible] Jail जोधपुर नागौर

No. 1063 dated 20/11/94 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Rajsamand

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

अधीक्षक
केन्द्रीय जेल जोधपुरनगर
Superintendent Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. R/CJM Rajsm/11—32 Dated 30.11.94 198

Forwarded to the Submitted to Sessions Judge Rajsamand

C.J.Magistrate

(C. B. Rajpal)
Chief Judicial Magistrate
RAJSAMAND (Raj.)

Date of receipt in Appliate Court

(P.T.O.)

(26)

A.F.R.

9.9.05

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1588/1994

Bifaiya

-Versus-

State of Chhattisgarh

J U D G M E N T

(27)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1588/1994

. Bifaiya

-Versus-

State of Chhattisgarh

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Smt. Kiran Jain for the appellant.

Shri Akhil Mishra, P.L. and Shri Ravindra Agrawal, P.L. for the State.

J U D G M E N T
(Delivered on 9 .09.2005)

The following oral judgment of the Court was delivered by Dilip R. Deshmukh, J.

This appeal is directed against the judgment dated 27.10.1994 delivered by Shri S.K.Gupta, Additional Sessions Judge, Jashpurnagar, District Raigarh in sessions trial No.108/94 whereby the appellant was convicted under Section 302 I.P.C. for committing murder of his wife-Biha Bai.

2. The factual matrix lies within a narrow compass. On 15.11.1993 the villagers of Gidha were in a festival mood on account of Diwali and as per ritual prevalent were consuming *Handia* liquor. The deceased Biha Bai was also in a festive mood and was consuming *Handia* liquor with her husband i.e. the appellant inside her house. While both were intoxicated, the appellant felt thirsty and asked for water. When the deceased did not pay heed to his repeated demand, the appellant got annoyed, picked up an axe lying nearby and dealt fatal blows by the axe on the neck of Biha Bai. The trachea & oesophagus were cut and

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Biha Bai succumbed to injury on the spot. When Tusuram P.W.1, son of the appellant, came home he saw Biha Bai lying dead. The appellant made an extra judicial confession before him. Tusuram P.W.1 lodged F.I.R. on the next day i.e. 16.11.1993 at 9.45 A.M. in Police Station Sanna, District Raigarh situated 25 Kms away, vide Ex.P.1.

3. Investigating officer Sub-Inspector V. Pradhan P.W.8 reached the spot and prepared inquest vide Ex.P.12. The dead body of Biha Bai was sent for autopsy. Dr. Ranjit Toppo P.W.6 found an incised wound 7 ½" x 2 ½" x 3" on lower third of neck post lateral aspect directed horizontally, an incised wound on the level of left mandible 4" x 3" x 3" horizontally placed, an incised wound near the middle of left scapula 4 ½" x 2 ½" x 2" with underlying scapula cut directed horizontally and another incised wound on the upper border of left shoulder joint at the middle 3" x 2 ½" x 2 ½" with dislocation of shoulder. The left common carotid artery was cut. Similarly the lateral third of the left side of oesophagus and trachea were also cut. He opined that cause of death was due to shock, as a result of extensive haemorrhage due to the above mentioned injuries. Nature of death was opined to be homicidal. An axe was seized vide Ex.P.4 from the appellant on 16.11.1993. On the same day i.e. 16.11.1993 a white *dhoti* having blood like stains was also seized vide Ex.P.5 from the appellant. After completion of investigation, the appellant was prosecuted under Section 302 I.P.C. for committing murder of his wife Biha Bai.

4. The appellant abjured his guilt. The prosecution examined as many as eight witnesses. The evidence consists of extra judicial

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confession by the appellant before Tusuram P.W.1, medical evidence of Dr. Ranjit Toppo and the recovery of axe and *dhoti* with blood like stains from the appellant. The trial Court also relied upon the report of Forensic Science Laboratory, Raipur, which confirmed the presence of blood on the axe and *dhoti* seized from the appellant.

5. Learned counsel for the appellant has assailed the conviction of the appellant under Section 302 I.P.C. on the ground that the appellant had no enmity or any grudge against his wife and the evidence of Tusuram P.W.1 in paragraph-3 clearly depicted that and the appellant was fully intoxicated after consuming *Handia* liquor and was not in a position to intend the natural consequences of his act.

6. Learned counsel for the appellant has also made an alternative submission that the act attributed to the appellant may at the most make out a case under Section 304 Part II of the I.P.C. as the accused was highly intoxicated. On the other hand, learned counsel for the State has supported the impugned judgment.

7. We have heard the rival contentions. We have also gone through the record. The testimony of Tusuram P.W.1 shows that on Diwali day after consuming *Handia* liquor in the nearby locality when he returned home, he saw her mother lying dead. His father, the appellant, who was present in the house, told him that he had killed his mother. Tusuram P.W.1 had deposed that thereafter he went to lodge F.I.R. vide Ex.P.1. Barnuram P.W.2 has deposed that on being informed by Tusuram that his father has killed his mother, he went to the house of the appellant and saw the dead

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body of the deceased who had sustained injuries in the neck. Sub-Inspector V. Pradhan P.W.8 has testified that he had recovered an axe and the *dhoti* at the instance of the appellant vide Exs.P.4 & P.5. The report of the Forensic Science Laboratory Ex.P.5 also establishes that presence of blood was confirmed on the axe as well as dhoti seized from the appellant. The medical evidence of Dr. Ranjit Toppo P.W.6 clearly establishes that the deceased had sustained injuries, as mentioned in para-3 (supra). Medical evidence establishes beyond doubt that death of Biha Bai was homicidal in nature.

8. We have gone through the evidence of aforesaid witnesses. We find that the testimony is reliable and worthy of credit since nothing has been elicited in cross-examination so as to disbelieve these witnesses. It is thus established beyond doubt that the appellant had caused the death of Biha Bai by assaulting her repeatedly by a *Tangia*.

9. The only question which now remains for our consideration is what offence was committed by the appellant. Tusuram P.W.1 in paragraph 3 of his testimony has given a vivid description about the atmosphere in the village as well as the condition of his father. He has stated that in a festive mood the villagers had consumed *Handia* liquor and his father had also consumed *Handia* liquor to such an extent that he was fully intoxicated and unable to understand what he was doing.

10. Section 86 I.P.C. of the I.P.C. is as follows:

> **"86. Offence requiring a particular intent or knowledge committed by one who is intoxicated**:-- In cases where an act done is not an offence unless done with a particular knowledge or intent, a person

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> who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

Learned counsel for the appellant has placed reliance on *Basdev v. State of Pepsu* reported in **A.I.R. 1956 S.C. 488** wherein it was observed by the Apex Court while interpreting section 86 I.P.C. as follows:

> "While the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possible be felt by reason of this omission. So far as knowledge is concerned the court must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, the court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about the court can apply the rule that a man is presumed to intend the natural consequences of his act or acts."

11. In the facts and circumstances of the case and considering the evidence of Tusuram P.W.1 we find that at the time of occurrence both the appellant and his wife-Biha Bai were consuming *Handia* liquor. It is also pertinent to note that both the appellant and his wife were peacefully enjoying *Handia* liquor in a festive mood of Diwali inside their house and there was no quarrel between them. Upon refusal by Biha Bai to give water the appellant suddenly got agitated and in a state of extreme intoxication dealt fatal blows by *Tangia* on the neck of Biha Bai while not being able to intend the consequences of his act. The appellant who had no grudge against his wife-Biha Bai was in a

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highly intoxicated state. It was under the influence of intoxication that the appellant got annoyed to such an extent on the mere refusal by Biha Bai to give him water that he picked up an axe and dealt fatal blows on the neck of Biha Bai. The fact that the appellant was in a highly inebriated state and unable to intend the consequences of his act, we are of the considered opinion, in the facts and circumstances of the case that the requisite intention for causing the death of Biha Bai cannot be attributed to the appellant though the requisite knowledge that the injuries inflicted on Biha Bai were sufficient to cause her death could be attributed to the appellant.

12. Having thus considered the rival submissions and the facts and circumstances of the case, we are of the considered opinion that the offence committed by the appellant would not travel beyond Section 304 Part II of the I.P.C.

13. In the result, the appeal is partly allowed. The appellant is acquitted of the charge under Section 302 of the I.P.C. Instead he is convicted under Section 304 Part-II of the I.P.C. Considering the nature of injuries sustained by Biha Bai, we sentence the appellant to rigorous imprisonment for ten years. The appellant is in custody since 17.11.1993 i.e. 11 years and 9 months. The appellant was granted bail vide order dated 12.3.2003. However, as the appellant could not furnish bail bond, he remained in jail and has already undergone the sentence. The appellant shall therefore be set at liberty, if not required in any other case.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge